(4)

BEFORE THE M.P. STATE ADMINISTRATIVE TRIBUNAL
BHOPAL BENCH, BHOPAL

Case No.O.A.B.822 of 1999

BETWEEN

Mohd. Israil, aged about 33 Years, S/o Mohd. Ismail, ~~XX~~ Driver, In the Office of Child Development Officer, Nawagarh, Dist. Durg and R/o Haji Safat Takia Para, Shakir Manzil, Durg.

....APPLICANT

AND

1. The State of Madhya Pradesh, through the Principal Secretary, Women & Child Development Department, Vallabh Bhawan, Mantralaya, Bhopal.

2. The Commissioner, Women & Child Development Directorate, Paryavas Bhawan, M.P., Bhopal

3. Dist. Women & Child Development Officer, Dist. Durg, Durg,

4. The Collector, District - Durg

...RESPONDENTS

PETITION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE APPLICANT :

As in the cause title above.

2. PARTICULARS OF THE RESPONDENTS :

As in the cause title above.

Cont'd.....2

(145)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.4693 OF 2004

Petitioner : Mohd. Israil

versus

Respondents : The State of Madhya Pradesh (now Chhattisgarh) and others

Present : Mrs. Fouzia Mirza, counsel for the petitioner.
Mr. V.V.S.Moorthy, Deputy Advocate General with Mrs. Anju Ahuja, Deputy Government Advocate for the State/respondents.

ORDER
(Passed on 22nd Day of December, 2006)

This petition is by way of transfer from the State Administrative Tribunal, wherein the Original Application No.822 of 1999 was filed in October, 1999 seeking a direction to quash the impugned termination order dated 22-9-1999 (Annexure A-1). The original application was transferred to this Court on dissolution of the State Administrative Tribunal and re-numbered as Writ Petition No.4693 of 2004.

2. The indisputable facts of this case are that the petitioner was appointed as Driver in accordance with law on the basis of the recommendation made by the Empowered Committee in its eleventh

meeting on probation for a period of two years on the pay-scale of Rs.3050-4590 by order dated 3-9-1998. The appointment order dated 3-9-1998 was thereafter confirmed by the State Government by order dated 4-2-1999 (Annexure A-13-1). According to learned counsel appearing for the petitioner, the petitioner was working on probation with full satisfaction. However, by order dated 22-9-1999 (Annexure A-1), the petitioner was terminated from the service on the ground that the appointment of the petitioner was not in accordance with law. The impugned order, which apparently attaches stigma to the effect that the appointment order was obtained illegally, is contrary to the records as the appointment was made strictly on the basis of the recommendation made by the Empowered Committee in its eleventh meeting. Learned counsel appearing for the petitioner submits that the impugned order is bad and the same deserves to be dismissed. The impugned order, which visits with civil consequences, was not passed after affording an opportunity of hearing to the petitioner, thereby violating principles of natural justice and fair play in action.

3. Mr. V.V.S.Moorthy, learned Deputy Advocate General with Mrs. Anju Ahuja, learned Deputy Government Advocate, appearing for the State/respondents, *per contra*, submits that the impugned termination order is simpliciter as no longer required and the services of the petitioner could be terminated during the probation period.

4. I have heard learned counsel appearing for the parties and perused the petition and return and the records appended thereto. It is evident that the impugned termination order attaches stigma as it is not an order of termination simpliciter, but with the allegation that the

appointment order was not issued in accordance with law. It is very clear as if the order has been obtained illegally.

5. It is well settled principle of law that no order, which visits with civil consequences imposing punishment attaching stigma, can be passed without affording sufficient opportunity of hearing to the petitioner.

6. In this case, it is not disputed that no opportunity was afforded to the petitioner before the impugned order of termination was passed. The petitioner had already worked for more than one year on the basis of the appointment order dated 3-9-1998, which appears to be passed in accordance with law on the basis of the recommendation made by the Empowered Committee in its eleventh meeting.

7. The Supreme Court, in the case of ***Anoop Jaiswal*** vs. ***Government of India and another***[1], observed in para 12 as under :-

> "12. It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

8. The Supreme Court, in the case of ***Chandra Prakash Shahi*** **vs.** ***State of U.P. and others***[2], observed in para 12 as under :-

> "12. Now, it is well settled that the temporary government servants or probationers are as much entitled to the protection of Article 311 (2) of the Constitution as the permanent employees despite the fact that temporary government servants have no right to hold the post and their services are liable to be terminated at any time by giving them a month's notice without assigning any reason either in terms of the contract of service or under the relevant statutory rules regulating the terms and conditions of such service. The courts can, therefore, lift the veil of an innocuously-worded order to look at the real face of the order and to find out whether it is an innocent as worded. (See: Parshotam Lal Dhingra v. Union of India.) It was explained in this decision that inefficiency, negligence or misconduct may have been the factors for inducing the Government to terminate the services of a temporary employee under the terms of the contract or under the statutory Service Rules regulating the terms and conditions of service which, to put it differently, may have been the motive for terminating the services but the motive by itself does not make the order punitive unless the order was "founded" on those factors or other disqualifications."

9. The Supreme Court, in the case of ***Pavanendra Narayan Verma*** **vs.** ***Sanjay Gandhi PGI of Medical Sciences and another***[3], observed in para 21 as under :-

> "21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

10. The Supreme Court, in the case of ***State of Punjab and others*** vs. ***Sukhwinder Singh***[4], observed in para 19 as under :-

> "19. It must be borne in mind that no employee whether a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. If in every case where some kind of fact-finding inquiry is made, wherein the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment....."

(150)

11. The Supreme Court, in the case of ***State of Punjab and others*** **vs.** ***Balbir Singh***[5], observed in para 7, as under :-

> "7. Thus the principle that in order to determine whether the misconduct is motive or foundation of order of termination, the test to be applied is to ask the question as to what was the "object of the enquiry". If an enquiry or an assessment is done with the object of finding out any misconduct on the part of the employee and for that reason his services are terminated, then it would be punitive in nature. On the other hand, if such an enquiry or an assessment is aimed at determining the suitability of an employee for a particular job, such termination would be termination simpliciter and not punitive in nature. This principle was laid down by Shah, J. (as he then was) as early as 1961 in the case of State of Orissa v. Ram Narayan Das[7]. It was held that one should look into "object or purpose of the enquiry" and not merely hold the termination to be punitive merely because of an antecedent enquiry. Whether it (order of termination) amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry....."

12. For the reasons and analysis hereinabove, the impugned termination order dated 22-9-1999 (Annexure A-1) deserves to be quashed and is quashed. On the question of grant of back wages, no foundation has been laid with regard to the gainful employment of the petitioner. Looking to the time-gap between passing of the impugned

termination order and passing of this order when the matter was pending in the Court and looking to the financial condition of the concerned respondents, it would not be fair to grant full back wages. This Court is of the opinion that grant of 30% back wages would be sufficient in the interest of justice.

13. For the reasons above-stated and the dicta laid down by the Supreme Court in various cases, this petition is allowed. The respondents are directed to reinstate the petitioner in service with 30% back wages. The petitioner would be entitled to all consequential benefits like seniority etc. on notional basis. In the facts and circumstances of the case there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

---

1 (1984) 2 SCC 369
2 (2000) 5 SCC 152
3 (2002) 1 SCC 520
4 (2005) 5 SCC 569
5 (2004) 11 SCC 743

Gopal